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Message to the 105th South Carolina General Assembly

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*"The care of human life and happiness,
and not their destruction, is the first and
only legitimate object of good government."*

—Thomas Jefferson

Providing for the Public Safety—
Our Challenge for the Future



Richard W. Riley, Governor

JANUARY 31, 1984

PROVIDING FOR THE PUBLIC SAFETY-OUR CHALLENGE FOR THE FUTURE

PREPARED FOR:

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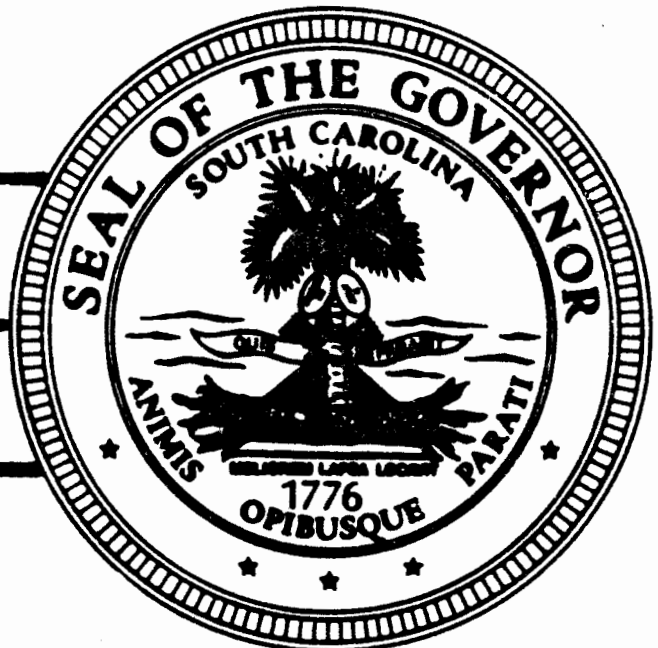
State of South Carolina
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Our Challenge for the Future



Richard W. Riley, Governor

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State of South Carolina

Office of the Governor

RICHARD W. RILEY
GOVERNOR

January 31, 1984

Post Office Box 11450
COLUMBIA 29211

Dear Mr. President and Members of the Senate:
Dear Speaker Schwartz and Members of the House of Representatives:

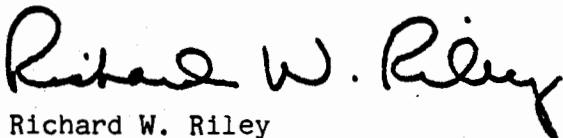
As a just and humane people, we in South Carolina must strive to be sensitive to the needs of victims of crime and must support victims' rights with the same diligence as we provide protection to those accused of crime.

In spite of our successful efforts to reduce the incidence of crime, we cannot eradicate it, nor can we eliminate its adverse effects. We can, however, dedicate ourselves to reduce many of the burdens borne by its victims. We have a responsibility to guarantee the rights of crime victims in written public policy, to insure their meaningful participation in the criminal justice system and to address their very real needs through state and local programs.

Those victims in our state who meet injury or death at the hand of the drinking driver require our continuing attention as well. I would urge you to persist in our attack on this insidious problem by enacting additional measures, during this legislative session, to prevent alcohol-related accidents and to remove the drinking drivers from South Carolina's streets and highways.

I know you are as concerned as I am about these issues and will view my attached recommendations with the same degree of commitment. Our challenge for the future must be to take strong measures which will better fulfill government's responsibility as guardians of the public safety.

Respectfully,


Richard W. Riley

RWR:wr

Attachments

Governor's Office
Division of Public Safety

1984 PUBLIC SAFETY LEGISLATIVE PROPOSALS

CRIMINAL JUSTICE INITIATIVES

Victim-Related Legislation

The incidence of crime in South Carolina is terrifying. Between now and tomorrow afternoon, our crime index indicates that there will be 62 violent crimes committed against people in this state, including one murder, three rapes, and forty-eight aggravated assaults. The victims of these crimes will be people like us; people who never expected it to happen to them; people who feel they take precautions and are safe; people unlucky enough to find themselves suddenly in the path of a criminal.

The trauma that crime victims experience can be devastating. Emotional injuries can be especially painful with feelings that include overwhelming guilt, anger, stress and fear. Physical injuries may result in tremendous hospital bills, permanent disabilities or even death. The financial losses accrued trying to overcome the effects of a crime can strike a terrible blow to a struggling family or force them to seek public assistance.

Victims can be affected tragically by a crime, but too often they are victimized yet again by the sometimes cumbersome processes of the criminal justice system. It is a system that expects them to "do their duty" with little regard for the loss of wages, transportation and child care needs, and emotional stress endured by the victims in court appearances. It is a system that doesn't routinely inform victims of the status of their case, letting the victim read about the outcome in the paper or see the offender on the street. It is a system which, in many areas of the state, after examining a sexual assault victim and gathering critical evidence from her body, does not pay the bill for the exam. It is a system that charges a homicide victim's widow for the towing and storage of her dead husband's stolen car.

Citizens and lawmakers are awakening to the plight of crime victims. State after state has enacted new statutes to help victims and witnesses. In South Carolina, laws and policies are needed to give proper attention to the rights and services these victims deserve.

Today, I want to endorse several bills which have been recommended by my Subcommittee on Victims of Crime and Domestic Violence, bills which will start us on the road toward erasing the indifference of our criminal justice system toward victims and witnesses. First is a bill with three major sections. It begins with a Victim's Bill of Rights which, although not enforceable by law, clearly and specifically defines and explains the basic rights that should be afforded victims and witnesses. This Bill of Rights demonstrates that the lawmakers of South Carolina have established and recognize a statewide policy for legislation and agency guidelines. Some of the most important aspects of victim rights covered in this Bill include:

- A. The victim's/witness' right to be informed of the progression and scheduling of their case and when the victim may participate in the proceedings.
- B. The victim's/witness' right to restitution, reparation, compensation and security at his job.
- C. The victim's/witness' right to be protected, to the extent possible, from intimidation by defendants, their family or friends.
- D. The victim's/witness' right to be treated with dignity and compassion by all members of the criminal justice, medical and media systems with whom they come in contact.

The second section of this bill deals with victim impact statements, which benefit the victim but also give sentencing judges more information about the crime than might have been apparent during the trial. Victim impact statements are questionnaires that identify any financial, physical and emotional effects the crime has had on the victim and his/her family. The solicitor's office should be responsible for explaining to victims or their families their right to submit such a statement, should assist in the completion of the statement and should submit it to the appropriate judge and parole board for use in determining the disposition of the case.

The third section requires that the state and/or local jurisdiction assume the cost of collecting and storing any type of conveyance that has been used in a crime. Fees for handling a stolen vehicle should not fall to the owner of the vehicle but to the government agency that is collecting evidence for the case. Additionally, state and local jurisdictions should assume the cost of the routine physical examination for sexual assault victims, which would include the collection of evidence, venereal disease treatment and pregnancy prevention precautions.

Secondly, the Victim's Compensation Act should be amended in several ways to allow it to more equitably and appropriately compensate victims of violent crimes with physical injuries who have unreimbursed expenses. Key components include:

- * To reduce the minimum actual expense of \$300 to a \$100 deductible on compensable claims.
- * To provide the director with authority to enter into reciprocal agreements with other states which have similar compensation programs in order that South Carolinians who are victims in other states be eligible for reimbursement.
- * To ensure that the interest generated by this Fund is paid to the Fund to support a portion of the costs for the statewide program discussed below.

- * To expand the functions of the Fund to include a statewide office to be the focus of victim/witness assistance programs, to provide technical assistance and training to agencies, to develop guidelines for agencies, to coordinate state efforts to help victim/witnesses, to develop public awareness programs, to coordinate legislative initiatives and serve as a clearinghouse for victim/witness issues and information.

I also recommend consideration of funding to create victim/witness assistance programs in each solicitor's office. These local offices are essential to any statewide effort to assist victims/witnesses and would be responsible for the victims/witnesses of crimes in their circuit, would provide the direct services these people need and be the vanguard of victim/witness rights and protection on the local level.

Other legislation has been proposed that would greatly affect the safety and care of certain victims:

Domestic Violence Legislation has been proposed in two parts, a civil component (H.2760 and S.463) and a criminal component (H.2761 and S.464). The criminal provisions create the crime of domestic violence, provide penalties for offenses and reinforce a law officer's ability to make a warrantless arrest when "probable cause" exists for physical abuse. The civil component clarifies and reforms current civil law. It creates a cause of action in Family Court for domestic abuse and authorizes police officers to provide support to victims (such as transportation) with protection from liability. It allows for ex parte orders to be issued in restricted circumstances for physical protection.

There are several thousand reports of domestic assaults annually in S.C. The majority of states have passed comprehensive domestic violence legislation, but currently in South Carolina, victims of domestic violence face a legal system with major deficiencies and an inadequate response to their problems: hearings take weeks to be scheduled; Family Court restraining orders are not enforceable; police are reluctant to intervene and their power is limited; the criminal process does not treat domestic violence seriously and discourages arrest and prosecution. The proposed legislation corrects these problems and is a necessity to the proper protection of the endangered family members in South Carolina.

Another bill (H.3268 and S.655) provides a procedure for taking into protective custody an adult who is found to be in a life-threatening situation. This function would be performed by a law enforcement officer and the statute helps define the officer's duties in such a situation. In the past, law officers who discovered mistreated adults who were incapacitated had to locate a judge to obtain an order for removal which was often difficult. This amendment offers the possibility of immediate protection for endangered adults.

Drug Forfeiture

Under present law, law enforcement officers are prohibited from seizing certain equipment used by major drug traffickers in their smuggling operations. Also, state law enforcement does not have the ability to seize money and property accumulated through the drug trade, as do federal agents. Proposed forfeiture legislation, as recommended by my Criminal Justice Committee, would give us the means to financially cripple smugglers, as has been done successfully on the federal level.

Arson Strike Force

The incidence of arson in South Carolina continues to cost taxpayers millions of dollars annually through payment of insurance. The loss of lives, of course, cannot be measured in dollars and cents, but the emotional impact on the victims and families is overwhelming.

For these reasons, I am again recommending a .5 of 1% surcharge on all fire insurance premiums by insurance companies to support a statewide Arson Strike Force at the State Fire Marshal's Office. For the consumer, this amounts to 50¢ for every \$100.00 of fire insurance premiums. I am concerned about any additional cost to the consumer, even though it is small. But I feel it is essential to curb indirect costs (to the consumer) because of higher insurance premiums due to claim payments on suspicious fires. Another southern state (Florida), which has an investigation team, experienced an arrest and conviction rate which was double the national average. I hope the long-range effect of this action will be to lower insurance premiums.

Insanity Defense

Although the insanity defense is raised in few South Carolina criminal cases and is successful in even fewer, the defense raises fundamental issues of criminal responsibility. Very importantly, the insanity defense is often asserted in cases of considerable notoriety, which influences the public's perception of the fairness and efficiency of the criminal justice process.

I am again supporting the bill filed by Representative David Wilkins, with minor modifications, to allow an alternative verdict to the jury for "guilty but mentally ill". This approach offers the jury an attractive alternative to the stark choice between conviction and acquittal.

HIGHWAY SAFETY INITIATIVES

In 1982 in South Carolina, there were 294 fatal accidents involving alcohol. 331 South Carolinians lost their lives in these accidents. Many of those who died were drivers, passengers, or pedestrians who were not drinking, but who were victims of a DUI accident. The leading single cause of death every year for the 15 - 24-year-old in South Carolina and in the country is drunk driving.

Driving under the influence of alcohol or drugs is a major threat to the lives of South Carolinians. During the past several years, many people working at the grassroots have heightened our awareness of the pain that DUI causes every day. These citizen groups have made us look beyond the statistics about arrests, accidents and fatalities, and have confronted us with the reality of DUI as a personal tragedy. We have all been stimulated to try harder to seek solutions to this tragic problem.

The facts made it clear that comprehensive changes in our laws were needed. In January of 1983, I submitted a package of proposed DUI legislation to you. In June of 1983, a part of that package became law, increasing the penalties and sanctions for DUI. This year, you moved quickly to continue your work in this area by passing the Open Container Bill on the third day of the session, and I commend you for it. As important as these measures are, however, there are two other pending bills which require your immediate and committed action. They include raising the drinking age from 18 to 21 on a graduated basis (H.2080) and establishing .10% as an unlawful blood alcohol concentration level to operate a motor vehicle (S.329).

Raising the Age for Purchase of Beer and Wine

In South Carolina, the young 15 - 24-year-old driver is consistently over-involved in alcohol-related crashes. The young drivers compose 20% of all licensed drivers in the state; yet, they are involved in 40% - 45% of the alcohol-related traffic accidents. States who have raised the age for sale and purchase of alcohol have experienced an average of 28% fewer nighttime fatal crashes in the affected age group. Some states experienced as much as a 75% reduction. Such a law does not totally eliminate alcohol-involved accidents; however, it should be noted that a raised age can retard the "funnel-down" effect on 15 - 17-year-old drivers. In 1982, 379 drivers aged 17 and under were arrested for driving under the influence.

Establishing Unlawful Blood Alcohol Content Levels

By establishing a blood alcohol content level of .10% or greater as an unlawful level for the operation of a motor vehicle, a more consistent system of sanctions for driving under the influence is established. This legislation serves as a deterrent to driving under the influence. Certain, swift sanctions are an important part of a system to prevent alcohol-related crashes and fatalities.

Strengthening Implied Consent

Based on the final recommendations of my four Regional Task Forces on Drinking and Driving and the endorsement of their findings by my Committee on

Highway Safety, I recommend to you an additional measure to strengthen the Implied Consent law. Such legislation would provide immediate and certain penalties without the disadvantage and expense of overcrowding the correctional system. Other states have had success with driver's license sanctions as deterrents to Driving Under the Influence. Minnesota passed strengthened Implied Consent legislation in 1976. The passage of the statute, along with the public awareness of certain and immediate loss of a driver's license, has been associated with a marked decline in traffic fatalities. Alcohol-related license suspensions increased from 32 per 100 million miles traveled in 1967 to 126 suspensions in 1982. In the same period, Minnesota's death rate per 100 million vehicle miles declined from 5.17 deaths to 1.98 deaths per 100 million miles traveled.

The significant decrease in fatalities in Minnesota and other states indicates that administrative sanctions have a great potential for preventing alcohol-related accidents and fatalities. Based on these dramatic outcomes, South Carolina should take another step toward reducing alcohol-involved accidents.

The strengthened Implied Consent law in South Carolina would include the following:

- . a provision to increase the number of available tests allowable for law enforcement to determine the presence and level of alcohol or other drugs in the body.

- . a provision that refusal to consent to such tests will result in immediate surrender of the driver's license and, as with existing law, subsequently will incur a ninety-day administrative license suspension, a sanction which is independent of a license suspension resulting from a DUI conviction.

- . a provision that a person arrested for driving under the influence who registers a blood alcohol content of .10% or greater must immediately surrender his driver's license and subsequently will incur a thirty-day administrative license suspension, a sanction which is independent of a license suspension resulting from a DUI conviction.